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Federal Communications Commission
FCC MAIL SECTION

DA 95-1147

Before the **Jun 2 12 18 PM '95**
Federal Communications Commission
Washington, D.C. 20554

DISTANCED BY

MM Docket No. 95-73

In the Matter of

Amendment of Section 73.202(b). RM-8568
Table of Allotments,
FM Broadcast Stations.
(Boonville and Fayette,
Missouri)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 23, 1995; Released: June 1, 1995

Comment Date: July 24, 1995

Reply Comment Date: August 8, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Big Country of Missouri ("petitioner"), licensee of Station KTLH, Channel 230A, Boonville, Missouri, requesting the substitution of Channel 230C3 for Channel 230A at Boonville. Petitioner also requests the reallocation of Channel 230C3 from Boonville, Missouri, to Fayette, Missouri, and modification of the license for Station KTLH to specify Fayette as its community of license. Petitioner states that it will apply for the channel at Fayette if allotted to the community.

2. Petitioner contends that its request complies with Sections 1.420(g) and (i) of the Commission's Rules, which permits the modification of a station's license to specify a higher class channel and/or a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner states that the allotment of Channel 230C3 would provide Fayette, a community of 2,888 people,¹ with its first local aural transmission service, whereas Boonville, a community of 7,095 people, would retain Stations KCLR-FM and KWRT-AM. See *Denison and Pilot Point, Texas*, 4 FCC Rcd 3039 (1994).

3. We believe the public interest could be served by the substitution of Channel 230C3 for Channel 230A at Boonville and reallocation of Channel 230C3 from Boonville to Fayette, since it will provide Fayette with its first local FM transmission service and enable Station

KTLH to expand its service area. However, since petitioner indicated it intends to relocate its transmitter, there will be areas which will lose existing reception service as well as areas which will gain new reception service. We request that the petitioner provide information showing the areas and populations which will receive new service and the areas and populations which will lose existing service if Channel 230C3 is reallocated to Fayette.² In addition, the study should also indicate the number of reception services which are now available within the gain and loss areas.

4. Channel 230C3 can be allotted to Fayette, Missouri, in compliance with the Commission's minimum distance separation requirements with a site restriction 19.3 kilometers (12 miles) east of the community.³ The site restriction will prevent a short spacing to Station KFKF-FM, Channel 231C, Kansas City, Kansas.

5. In view of the fact that the proposed allotment would provide a first local aural transmission service to Fayette, Missouri, the Commission believes the public interest would be served by soliciting comments on petitioner's proposal to amend the FM Table of allotments, Section 73.202(b) of the Commission's Rules for the communities listed below:

	Channel No.
City	Present Proposed
Boonville, Missouri	230A, 257C2 257C2
Fayette, Missouri	--- 230C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **July 24, 1995**, and reply comments on or before **August 8, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Frederick A. Polner
Rothman Gordon Foreman & Groudine, P.C.
Third Floor, Grant Building
Pittsburgh, Pennsylvania 15219

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the*

¹ All population figures are from the 1990 census.

² "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another regardless of whether the service removed constitutes transmission service,

a reception service, or both." *Modification of FM and TV Authorizations to Specify a New Community of License* (Memorandum Opinion and Order), 5 FCC Rcd 7094, 7097 (1990).

³ The coordinates for Channel 230C3 at Fayette are 39-05-00 and 92-28-30.

Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.